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SUBJECT: SW CHINA: SELF-IMMOLATION CASE IN CHENGDU HIGHLIGHTS
PROBLEMATIC LAND USE SYSTEM

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11. (U) This message is sensitive but unclassified. Not for Internet distribution.

12. (SBU) Summary. Three recent cases in southwest China -- including a high-profile case where a Chengdu citizen set fire to herself to protest a demolition of a property -- illustrate how Chinese citizens here have been reacting with anger to a lack of limits on the government's ability to expropriate and resell land for the "public interest." Often, the compensation is only a fraction of what they would have received by selling the land themselves. Netizens reactions to the Chengdu self-immolation case were so strong that the government was forced to join in a public debate about clarifying contradictory laws and regulations on land use rights. Two other recent SW China land use cases also highlight the often corrupt nexus between local governments and real estate developers, as well as how citizens -- in the absence of a democratic system and strong rule of law -- end up protesting in the streets instead of, e.g. participating in zoning meetings or suing the government, as occurs in the United States. End Summary.

Introduction: Some Whys and Problems

with Below-Market-Price Sale of Land in China

13. (U) In theory, all land in China today is owned by the state in towns, and by farmers' collectives in the countryside. In practice, however, the sale of land-use rights in China has allowed land to be, in effect, privatized, a November 24 analysis by UK bank Standard Chartered states. The bank analysis suggests that local governments in China often sell land-use rights at less than market value for three reasons: 1) corruption, with local officials being bribed with, e.g. free apartments; 2) lack of limits on the government's ability to expropriate land, including no system for judicial review to help define what is "public interest" (gonggong liyi); and 3) local officials tend, at least for industrial land, to be less interested in the proceeds of the sale of land-use rights than the employment and increased tax base derived from new industries.

14. (U) Beyond the issue of taxpayers, collectively, suffering

losses when the government sells land at below-market prices, is the issue of governments re-selling land expropriated from existing land-use rights holders. All too often, these existing rights-holders often receive only a fraction of the actual revenues earned by the government in the sale. These former land-use rights holders become disgruntled because the "compensation" that they received from the government is perceived to be unfair and inadequate to purchase an equivalent property in another location.

Chengdu Firestorm:

Self-Immolation to Protest Demolition of Personal Property

¶5. (U) This problem of inadequate compensation of "land owners" gained national attention on November 13 in Chengdu when a 47-year old woman, Tang Fuzhen, set herself on fire (and died 16 days later) in protest against the demolition of her former husband's garment factory. The family reportedly had spent more than seven million RMB on the property, but the district government, after several rounds of negotiation and one earlier, failed demolition attempt (in which Tang had threatened to commit suicide), had only offered to pay 2.17 million RMB for the site. To carry out its second demolition attempt, the government labeled the building illegal on the grounds that Tang's husband did not possess a construction permit -- even though there was no such requirement at the time the factory was built.

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Internet's Firepower: Netizens,

Mobile Phone Video Meant Government Could Not Ignore This Case

¶6. (U) This Chengdu case might have gone largely unnoticed except that angry netizens joined in, strongly criticizing the local authorities for the violent way that in which the law was "enforced." Despite attempts by Sichuan authorities to suppress initial reports of the incident, a mobile-phone video of the self-immolation spread on the internet, inflaming public sentiment. Citizens have continued to express their views on the case by leaving comments on the website of the State Council Legislative Affairs Office, press reports indicated.

Firemen Saving the Party: Lawmakers, Officials, Academics React

¶7. (SBU) Once the case gained national prominence, lawmakers, officials, and academics -- in reaction to public anger against the government -- joined the debate on how to correct ambiguities and contradictions in China's current laws and regulations on eminent domain and forced demolitions. Liang Huixing, a member of the Law Committee of the National People's Congress (NPC), asserted in the official press that the urban housing demolition regulation under which Chengdu authorities acted should have been taken off the books after the passage in 2007 of a new property law. Contradicting Liang, the State Council Legislative Affairs Office, which issued the regulation

in 2001, insisted to the press that the rule was still in effect. Meanwhile, on December 7, five Beijing University professors wrote to the NPC to suggest that the legislature force the Office to revise or abolish the regulation, which they claimed violated the constitution and property law. Then, on December 9, the press reported that the Ministry of Land and Resources and the Ministry of Housing and Urban-Rural Development had begun research on an amendment.

18. (SBU) According to the 2007 property law, the government must compensate a citizen for expropriated property before they relocate, press reports indicate. In most cases, however, local governments give developers permission to begin work and leave the companies to negotiate with residents. Developers, eager to profit from China's housing boom, have often offered inadequate compensation and used underhanded methods -- such as paying off more vocal citizens -- to combat land-right holders, including so-called nail households (dingzihu), who tenaciously refuse to move. Shen Kui, one of the five academics, is quoted as saying that changing the regulation will be very difficult because local governments, which rely on "almost half of their revenues from land trading," will resist them.

Similar Incident in Guizhou Province

19. (U) A similar incident took place on November 27 in Guiyang, Guizhou Province, according to press reports. In a bid to dismantle nine houses and eight shops, a real estate development company entrusted security guards of another company to evacuate the residents by force. In the wee hours of the morning, the guards arrived in 10 minivans, smashed the doors, and forced 13 inhabitants to other parts of the city until the demolitions were complete. In protest, nearly 30 inhabitants used nearly 40 liquefied gas containers to block intersections for two hours -- creating huge traffic jams.

Two Protests Next to ConGen Chengdu Over Property Development

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10. (SBU) On both December 11 and 16, not more than 100 yards from the U.S. Consulate General in Chengdu, protesters blocked the street in front of the consulate to protest the construction of a huge office and residential complex adjacent to the consulate. (Both times, police limited traffic entering the street at the closest intersections while the protests were on-going.) On the evening of December 11, Consul General, accompanied by RSO and the Marine Detachment Commander, approached a small number of protesters and several dozen local residents milling around them. Also in the perimeter were several dozen police and their vehicles. An agitated elderly woman, one of the two most vocal protestors along with an elderly gentleman with a loudspeaker, told Consul General that the protesters were backed by 500 families, about 2000 citizens total, living in an apartment complex behind the Consulate. The citizens, which the woman claimed were not seeking monetary compensation, were protesting the closure of a road by the developer that the woman claimed was essential as an evacuation route should there be another natural disaster, such as the (May 2008) earthquake.

¶11. (SBU) Around noon on December 16, another group of 1-2 dozen protestors were observed by ConGenOff seated in chairs blocking traffic, and also holding a half torn sign that appeared to be a notice from the property developer. That day, the police were also compelled to close the major road in front of the Consulate, and observe the protest before cajoling its participants to peacefully disperse.

Comment: Eminent Domain and What Its Use in
U.S. and China Says About the Rule of Law, Democracy

¶12. (U) The use by the government of its power of eminent domain is also controversial in the United States, with the fundamental difference that in America citizen enjoy a strong system of rule of law, including a process by which city councils hold public meetings or hearings to allow a public debate on infrastructure or major development/zoning decisions. There is also a clear system for appraising the value of expropriated property, and a judicial appeal process. The most famous recent eminent domain case in the United State occurred in 2005, when the U.S. Supreme Court rule in "Kelo versus New London" that a Connecticut city had lawfully used eminent domain to transfer land from one private owner to another to further economic development because this was a permissible "public use" under the Takings Clause of the U.S. Constitution's Fifth Amendment.

¶13. (SBU) By contrast, China's rule of law is weak, and its legal and regulatory system underdeveloped and contradictory. Its authoritarian government is both intolerant of an open, defined, and fair system for airing of citizen grievances, as well as undermined by the connivances between corrupt officials and greedy developers. As a consequence, we have seen cases in SW China where citizens perceive that they must take to the streets or, tragically, set fire to themselves, to make their voices heard.
BROWN